to be advanced thereby.[8] Actions where the plaintiff has been induced to enter into the agreement through fraud, oppression, or undue influence on the part of the defendant, and is, therefore, not to be regarded as *in pari delicto* with the latter, are illustrative of this class of exceptions.[9] Other examples are cases in which the complaining party is one of a class of persons for whose protection the statute, which made the agreement in question *malum prohibitum,* was passed; in such suits the plaintiff is always allowed to recover property which he has transferred under the prohibited agreement.[10]

Still a third exception to the general rule is laid down by many authorities, namely, that wherever public policy requires the intervention of the courts, even though the parties are in equal guilt, the courts will intervene and grant such relief as may best serve the public interest.[11] In the decisions grouped under this exception,—if, indeed, it deserves to be called an exception,—the true theory which underlies the entire subject of relief from illegal contracts, is clearly indicated. As was pointed out in the recent case of *Hatch* v. *Gilchrist* (Ind. 1914) 106 N. E. 694, the question of the intervention of equity to relieve individuals from the effects of unlawful agreements into which they have entered, is ultimately dependent on the best interests of the public and rests in the discretion of the court. The general rule and its exceptions, which we have just considered, are useful, though artificial, tests, which may assist the court in exercising its discretion. The final inquiry, however, remains in all cases the same: "Has the complainant made such a case as would, were he innocent, entitle him to relief? And if so, does the best interest of society require that relief shall be afforded, notwithstanding the guilt of the party?"[12]

MARTIAL LAW.—The term martial law is often loosely used to mean any one of three systems of authority, to wit, (1) law for the government of military and naval forces; (2) law enforced by military or naval power in time of war, both in conquered territory and in disaffected regions at home; and (3) law enforced by the military authorities in time of peace when troops are used for the suppression of internal disorder. The first is statutory,[1] and aside from the mooted question as to how far decisions of courts-martial in cases affecting

[8]Reynell *v.* Sprye (1852) 1 De Gex, M. & G. *660, *679; Roman *v.* Mali (1875) 42 Md. 529. A distinction is sometimes drawn between cases where the wrong contemplated is *malum in se* and where it is mere *malum prohibitum,* relief being granted in only the latter class of cases. See Tracy *v.* Talmage (1856) 14 N. Y. 162; Duval *v.* Wellman (1891) 124 N. Y. 156. This seems, however, to be not an independent rule, but rather a result of the application of the principle that relief will be granted the guilty plaintiff only when public interest demands it.

[9]See Nat. Bank & Loan Co. *v.* Petrie (1903) 189 U. S. 423.

[10]As where a statute provides for the recovery of money lost on a bet or wager; Mitchell *v.* Orr (1901) 107 Tenn. 534; Kruse *v.* Kennett (1899) 181 Ill. 199; or where a statute penalizes only one of the parties, so that the other is not to be regarded as *in pari delicto.* White *v.* Bank (Mass. 1839) 22 Pick. 181.

[11]2 Pomeroy, Eq. Jur. (3rd ed.) § 941. See Lester *v.* Howard Bank (1870) 33 Md. 558; Hale *v.* Sharp (1867) 44 Tenn. 275.

[12]See Porter *v.* Jones (1869) 46 Tenn. 313, 321.

[1]*Cf.* N. Y. Consol. Laws, c. 36.

members of the military establishment are reviewable by civil tribunals,[2] is one of little concern to the public at large or to the practicing attorney. The second form of military law belongs to the realm of public law, and has been said to be of necessity the will of the commanding officer subject to the customs of war.[3] The third form of martial law is, however, of very vital concern to the American people owing to the increasing tendency to employ military force for the protection of life and property in strikes, riots, and calamities of flood and fire.[4] The discretion of the governor in declaring martial law is not subject to review by the civil courts,[5] but there are two views as to the powers of the military authorities in such exigencies. The doctrine prevailing in England is that the troops act merely as a *posse comitatus* for the suppression of violence, and that they have no power to promulgate and enforce regulations or to try civilians by court-martial for any offenses whatever.[6] The opposite view is that a proclamation of martial law by the proper authorities places all persons in the affected region under the jurisdiction of military commissions, and clothes the troops, acting under the orders of the governor, with authority even outside the zone of martial law, to suppress seditious newspapers,[7] and to arrest and detain persons suspected of fomenting disorder.[8] This form of martial law, involving a suspension of constitutional guarantees, is expressly authorized under the name of *Etat de Siege* by the constitutions of some foreign states,[9] but no such provisions appear in the Constitution of the

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[2]Since courts-martial are not inferior courts of the judiciary, in this country their decisions are not reviewable nor subject to writs of prohibition from the civil courts. The question of jurisdiction, however, is always open to inquiry on habeas corpus proceedings. 9 Columbia Law Rev. 447; State *v.* Long (La. 1914) 66 So. 377.

[3]Col. H. C. Carbaugh, U. S. A., in 7 Illinois Law Rev. 479, 495. How far this can be applied to disaffected districts at home where no actual hostilities are in progress, is a question on which the American authorities differ from the English. See article by Prof. Ballantine, 12 Columbia Law Rev. 529, 535 *et seq.*; *Ex parte* Marais, L. R. (1902) A. C. 109, and discussion of this case in 18 Law Q. Rev. 143. In "Martial Law", by H. Erle Richards, *Ibid.* 133, 139-140, it is said that the power to try and punish civilians in disturbed districts of one's own country in time of war, is necessary to the effectiveness of martial law.

[4]See article by Prof. Ballantine, 24 Yale Law Journ. 189; and article by Ex-Chief Judge Cullen of the N. Y. Court of Appeals, in 48 American Law Rev. 345.

[5]*In re* William Boyle (1899) 6 Idaho 609; Nance and Mays *v.* Brown (1912) 71 W. Va. 519, 524.

[6]The Case of Ship-Money (1637) 3 State Trials 825, permitting a declaration of martial law by the king in time of peace, has been effectually discredited by the Petition of Right. See Sir Frederick Pollock, 18 Law Q. Rev. 152.

[7]Hatfield *v.* Graham (W. Va. 1914) 81 S. E. 533; see discussion of this case in 14 Columbia Law Rev. 599.

[8]*Ex parte* Jones (1913) 71 W. Va. 567.

[9]Constitution of the Spanish Monarchy of 1876, Title 1, § 17. See *In re* Kalanianaole (1895) 10 Hawaiian Reports 29, which construes article 31 of the Constitution of the then Republic of Hawaii.

United States, or of any of the States.[10] As the first eight amendments to the federal Constitution are limitations upon the powers of Congress alone, the State governments are restrained from invasions of personal liberty only by the Fourteenth Amendment, and by such provisions as appear in their own State constitutions. The power to enforce this stringent form of military government is said by American courts upholding it, to rest in necessity and the right of the State to self preservation.[11]

In the recent case of *Ex parte McDonald* (Mont. 1914) 143 Pac. 947, growing out of the strike disorders at Butte, the Supreme Court of Montana has taken an intermediate position. The petitioner was first detained by the military authorities to prevent his supporting the rioters, and was then tried by court-martial and sentenced to a term of imprisonment. On an application for a writ of habeas corpus, the court held that a declaration of martial law by the governor gave the military authorities all powers necessary to suppress the insurrection, including that of arresting and detaining suspects to be handed over to the civil authorities for trial, but no power to try or punish civilians for insurrection or other crimes. The trial of the petitioner by court-martial was, therefore, declared void, but he was remanded to the custody of the militia to be handed over to the civil authorities. The view that the militia may detain suspects is upheld by the decisions of the Supreme Court of the United States, and of Colorado, in the famous cases growing out of the holding of Moyer by the State militia during the disorders at Cripple Creek,[12] but is open to criticism as permitting imprisonment of suspects for an indefinite time at the discretion of the military authorities, while preventing the latter from making examples of those who defy their authority and the laws of the State by such summary trial and punishment as would be most effective, if not essential, at such a time of public danger and lawless defiance of every legal authority.

If it clearly appears that the civil authorities are unable to cope with the situation, that the courts are defied by armed insurgents, or are unable to mete out justice through sympathy with one or another of the warring factions, and that the trial and punishment of offenders by court-martial is necessary to the re-establishment of peace, then the military authorities should be left in complete control and allowed every means to crush anarchy by effective martial law. But the rigors of such a regime should be applied only as a desperate last resource in the very greatest emergencies, and a resort for light and transient causes to martial law, involving, as it does, a suspension of constitutional guarantees, cannot be too heartily condemned.

MUNICIPAL TAXATION FOR PUBLIC PURPOSES.—During the nineteenth century, the scope of municipal enterprise in England was greatly

[10]See 24 Yale Law Journ. 189, 193. The constitutions of Massachusetts, New Hampshire, Rhode Island, and South Carolina, recognize the possibility of martial law, but do not define it as extending to a suspension of constitutional guarantees, and most State constitutions expressly provide for the supremacy of the civil over the military power.

[11]Nance and Mays *v.* Brown, *supra,* pp. 521, 522.

[12]Moyer *v.* Peabody (1909) 212 U. S. 78; *In re* Moyer (1905) 35 Col. 159.